

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE R. MOYER,

Plaintiff,

No. CIV S-03-1350 FCD DAD P

vs.

JAMES E. TILTON, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On July 9, 2003, plaintiff's pro se complaint was dismissed with leave to amend. Plaintiff, still proceeding pro se, filed an amended complaint on October 6, 2003. In 2004, the case was dismissed for failure to state a claim on which relief can be granted. On appeal, the Ninth Circuit determined that plaintiff has pleaded a colorable ex post facto claim. The judgment reversing and remanding the case was filed in this court on July 11, 2006.

On November 17, 2006, a notice of appearance was filed by counsel for plaintiff together with a motion for leave to file a second amended complaint. Plaintiff's amended motion filed November 22, 2006, is set for hearing before the undersigned on January 12, 2007.<sup>1</sup>

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<sup>1</sup> This court did not authorize service of plaintiff's pro se complaints on any defendant, and no defendant has appeared in the action in this court.

1 Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P.  
2 15(a). Plaintiff's motion will be granted, and the Clerk of the Court will be directed to file the  
3 revised version of plaintiff's second amended complaint presented on November 29, 2006, as an  
4 attachment to plaintiff's Notice of Errata.

5 Plaintiff's second amended complaint states a cognizable claim for relief pursuant  
6 to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). Pursuant to Rule 4(c)(2) of the Federal Rules of  
7 Civil Procedure, service will be effected on the defendants by the United States Marshal.

8 In accordance with the above, IT IS HEREBY ORDERED that:

9 1. Plaintiff's November 22, 2006 amended motion (docketed as #32) to file a  
10 second amended complaint is granted, and plaintiff's motion is dropped from this court's January  
11 12, 2007 law and motion calendar.

12 2. The Clerk of the Court is directed to detach and file the fourteen-page second  
13 amended complaint submitted by plaintiff on November 29, 2006, as Exhibit A to plaintiff's  
14 Notice of Errata (docketed as #34).

15 3. The Clerk of the Court shall amend the docket to reflect that the defendants are  
16 James E. Tilton, Jeanne S. Woodford, Jennifer Shaffer, and Mark Shepard, and the title of the  
17 case shall be amended accordingly.

18 4. Plaintiff's second amended complaint will be served on defendants James E.  
19 Tilton, Jeanne S. Woodford, Jennifer Shaffer, and Mark Shepard.

20 5. The Clerk of the Court shall send plaintiff four USM-285 forms, one  
21 summons, and an instruction sheet, together with a paper copy of this order.

22 6. Within fifteen days from the date of this order, plaintiff shall submit all of the  
23 following documents to the court in paper format:

- 24 a. A Notice of Submission of Documents similar to the attached form  
25 Notice of Submission of Documents;  
26 b. One completed summons;

1 c. A completed USM-285 form for each defendant; and

2 d. Five copies of the second amended complaint filed by the Clerk of the  
3 Court pursuant to this order.

4 7. Upon receipt of the documents required to effect service, the court will direct  
5 the United States Marshal to serve the defendants pursuant to Federal Rule of Civil Procedure 4  
6 without payment of costs.

7 DATED: January 4, 2007.

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION  
OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

- \_\_\_\_\_ one completed summons form;
- \_\_\_\_\_ four completed USM-285 forms; and
- \_\_\_\_\_ five copies of plaintiff's second amended complaint.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Plaintiff